

## **JOINT PUBLIC NOTICE**

### **U.S. ARMY CORPS OF ENGINEERS AND WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY**

#### **PROPOSED GENERAL PERMIT 03-04**

The District Engineer, Omaha District, U.S. Army Corps of Engineers, 106 South 15th Street, Omaha, Nebraska, 68102 is considering issuance of General Permit No. 200320004 (GP 03-04), pursuant to Section 404 of the Clean Water Act of 1972. GP 03-04 would authorize reservoirs and associated facilities located in waters of the United States that are constructed for the purpose of managing water produced during development of Coal Bed Natural Gas. GP 03-04 would be applicable within the Wyoming portion of a geographic area defined as the Powder River Basin (PRB) in the *Record of Decision (ROD) and Resource Management Plan Amendments for the Powder River Basin Oil and Gas Project* issued by the U.S. Bureau of Land Management (BLM), Wyoming State Office in April 2003.

Under the authority of Section 404, the Corps regulates the discharge of dredged and fill material in waters of the United States, including wetlands. GP 03-04 would be issued in accordance with the "Regulatory Programs of the Corps; Final Rule," as published in the *Federal Register*, Volume 51, Number 219, dated November 13, 1986. Section 323.2(h) of those regulations define general permits as Department of the Army authorizations that are issued on a nationwide or regional basis for a category or categories of activities when (1) those activities are substantially similar in nature and cause only minimal individual and cumulative environmental impacts; or (2) the general permit would result in avoiding unnecessary duplication of regulatory control exercised by another Federal, state, or local agency provided it has been determined that the environmental consequences of the action are individually and cumulatively minimal.

General permits issued to avoid unnecessary duplication of other federal regulatory programs, such as the Application for Permit to Drill (APD) program administered by the BLM, are defined in Part 325.5(c)(3) as programmatic permits. Part 325.2(e)(2) gives the District Engineer authority to issue regional general permits for specific geographic areas, such as the PRB, after compliance with other procedures of the regulation. The Corps evaluation will include application of guidelines promulgated by the Administrator, U.S. Environmental Protection Agency, under the authority of Section 404(b) of the Clean Water Act of 1972 (40 CFR Part 230). Specifically, the Corps will ensure compliance with Part 230.7 of the guidelines, which are applicable to issuance of general permits.

The PRB encompasses approximately 12,500 square miles in all or parts of Campbell, Converse, Johnson, and Sheridan Counties in northeastern Wyoming as shown in Figure 1 of the ROD. The PRB includes portions of the Bighorn River, Tongue River, Powder River, Belle Fourche River, Cheyenne River, and North Platte River watersheds. A copy of Figure 1 from the ROD is attached.

Authorization of reservoirs associated with gas production within the PRB in Wyoming is necessary because the BLM has estimated that 39,000 gas wells will be drilled in the PRB during a 10-year period beginning in 2003 and most drilling would occur during the first 8 years. Gas wells produce water as a by-product. The BLM has estimated that 356,276 acre-feet of water would be produced in 2004, 386,336 acre-feet would be produced at the peak of production in 2006, and that water production would taper off to 2,038 acre-feet in 2017. The average rate of water production during the next 5 years (2004-2008) has been estimated to be 365,556 acre-feet per year.

The BLM administers the federal minerals under 68 percent of the PRB. The ROD approves a water handling method with emphasis on construction of impoundments for both infiltration and containment. Containment reservoirs would be located in uplands outside of waters of the U.S. and would be utilized less than 5 percent. Infiltration reservoirs could be located in waters of the U.S. and would be utilized between 30 and 70 percent depending on the sub-watershed with an average of 53 percent for the PRB. Therefore, it may be necessary to utilize infiltration reservoirs to manage approximately 193,745 acre-feet of water per year for the next five years on average and 131,746 acre-feet of that amount would be managed under the BLM's jurisdiction.

Infiltration reservoirs may be created by rehabilitation and/or enlargement of existing dams, by construction of new dams, or by construction of dikes. A dam is defined as the placement of fill to impound water on a stream channel. A dike is defined as the placement of fill to contain water in areas adjacent to streams but dikes are located off-channel. Reservoirs located in waters of the U.S. in the PRB are primarily located on ephemeral streams due to the geography of the area as well as the desire to maximize the amount of storage provided. Reservoirs located on perennial streams would not satisfy the project purpose in most instances because natural runoff would fill the reservoir leaving little or no storage available for water produced by gas wells.

The Wyoming State Engineer's Office (WSEO) has determined that it may be necessary to construct channels around reservoirs to by-pass natural runoff in order to prevent mixing with water produced by gas wells as a means of satisfying downstream water rights. This requirement is actually a means of addressing water quality concerns in instances where the beneficial use is irrigation. The WSEO has indicated that by-pass channels should be designed to convey base flows up to the 50 percent chance exceedance (2-year return interval) flow event.

If issued, GP 03-04 would authorize specific activities in waters of the U.S. necessary for rehabilitation, construction, and operation of reservoirs when the project purpose is storage of water produced by gas wells. Activities that could be authorized by GP 03-04 are described in Appendix A of this notice. The proposed permit criteria in Appendix A are in draft form and are subject to change.

All authorized activities must be accomplished in compliance with general conditions as described in Appendix B. General conditions are necessary to ensure compliance with regulations and policies established pursuant to the goal of the Clean Water Act of 1972, which is "...to restore and maintain the chemical, physical, and biological integrity of the nation's waters." Protection of wetlands is important because wetlands provide a number of functions that are important to maintaining clean water; including, flood flow attenuation, sediment trapping, nutrient removal, groundwater recharge, and erosion protection.

Permittees would be required to obtain written verification from the Corps or the BLM that a proposed activity is authorized by GP 03-04 prior to undertaking the activity if more than 0.10 acre of waters of the U.S. would be filled due to a discharge of dredged or fill material. The BLM would have the authority to issue verifications for activities associated with federal mineral development without prior coordination with the Corps because the BLM conducts an evaluation of potential environmental consequences for each APD in accordance with requirements of the National Environmental Policy Act of 1969, Endangered Species Act of 1973, National Historic Preservation Act of 1966, Executive Order 11990 for the Protection of Wetlands, and other federal laws. The Corps would retain its authority to enforce compliance for all GP 03-04 authorizations, including those associated with federal mineral development. However, authorization by the Corps does not supersede the authority of other agencies to impose and enforce conditions that are more restrictive. The permittee would be required to comply with all other federal, state, tribal, and local requirements imposed by other agencies. The notification procedure for GP 03-04 is defined in Appendix C.

At this time, the Corps is soliciting comments from the public; federal, state and local agencies and officials; Indian tribes; and other interested parties in order to properly evaluate the potential environmental affects of activities that could be authorized by GP 03-04. Any comments received will be considered by the Corps in its decision whether to issue GP 03-04.

The decision will be based on an evaluation of potential effects, including cumulative effects, of authorized activities on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefits which reasonably may be expected to accrue from authorized activities must be balanced against any reasonably foreseeable detriments. All factors which may be relevant to the decision will be considered; including, water quality, wetlands, historic properties, fish and wildlife, flood plains, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, energy needs, safety, food and fiber production, mineral needs, conservation, economics, aesthetics, considerations of property ownership and, in general, the needs and welfare of the public.

Comments are also used to determine the need for a formal public hearing. Any person may request, in writing and within the comment period specified in this notice, that a public hearing be held for the purpose of gathering relevant information that cannot be provided through other means. Requests for public hearings must be identified as such and shall state specifically the reasons for holding a public hearing.

Any interested party (particularly officials of any town, county, state, federal, Tribal, or local organization whose interests may be affected by activities authorized by GP 03-04) is invited to submit to this office written facts, arguments, or objections on or before the expiration date of this notice. Any agency, individual, or organization objecting to issuance of GP 03-04 should specifically identify it as an objection with clear and specific reasons. Comments, both favorable and unfavorable, will be accepted, made a part of the record and will receive full consideration.

The Wyoming Department of Environmental Quality (WDEQ) has authority to place additional terms and conditions on authorized activities under authority of Section 401 of the Clean Water Act of 1972. Section 401 gives the WDEQ authority to further regulate activities requiring a federal license or permit, such as a Section 404 permit, based on water quality standards. Section 404 permits, including general permits, cannot be issued without certification from the WDEQ that authorized activities will not violate applicable water quality standards. The WDEQ will also consider comments with an intent to certify in accordance with provisions of Section 401 and hereby incorporates this public notice as its own public notice.

If issued, GP 03-04 would be in effect for a period of five years from date of issuance. However, it would be subject to extension, modification, suspension, or revocation by the District Engineer in accordance with applicable regulations. The District Engineer retains discretionary authority to prohibit the use of general permits for specific activities and may require the submittal of an application for a standard permit if a particular activity would result in more than minimal impacts to the aquatic environment.

In compliance with the National Historic Preservation Act (NHPA) of 1966, the lead federal agency (Corps or BLM) will check the National Register of Historic Places and its current supplements and coordinate with the Wyoming State Historic Preservation Office (WSHPO) as required. In most cases, the Corps believes that authorized activities would have "no adverse effect" on historic properties. The Corps will consider comments concerning the procedure for protection of historic properties and cultural resources provided by the WSHPO and others in response to this public notice.

In compliance with the Endangered Species Act (ESA) of 1973, the lead federal agency (Corps or BLM) will evaluate proposed activities for potential adverse affects on threatened or endangered species and critical habitat. If it is determined that an activity may affect a species designated as threatened or endangered, or its critical habitat, the lead federal agency will consult with the U.S. Fish and Wildlife Service (USFWS). Activities cannot be authorized that are likely to jeopardize the continued existence of a federally listed threatened or endangered species or critical habitat. The Corps will also consider comments concerning protection of threatened or endangered species provided by the USFWS and others in response to this public notice.

All replies to this public notice must be sent to the Corps at the following address:

U.S. Army Corps of Engineers  
Wyoming Regulatory Office  
2232 Dell Range Boulevard, Suite 210  
Cheyenne, Wyoming 82009-4942

Mr. Thomas Johnson may be contacted for additional information at (307) 772-2300.

**Comments received after the expiration date of this public notice will not be considered.**

This and other public notices issued by the Wyoming Regulatory Office can also be obtained by visiting its web site at <http://www.nwo.usace.army.mil/html/od-rwy/Wyoming.htm>.

## **APPENDIX A**

### **AUTHORIZED ACTIVITIES**

As currently proposed, GP 03-04 would authorize the following activities associated with storage and management of water produced during development of coal bed natural gas within the Powder River Basin:

1.       **Surveys:** The purpose of these activities is to gather relevant geographic and scientific information about an area prior to development. Surveying activities include core sampling and other exploratory-type bore holes; soil survey and sampling; and historic resources surveys. Plugging of test holes may also be necessary. All disturbed areas in waters of the U.S. must be restored to original contours. The discharge of drilling mud and cuttings may require a separate permit under Section 402 of the Clean Water Act.
2.       **Access Roads:** The purpose of this activity is to provide either temporary or permanent access to a reservoir location. Road crossings of waters of the U.S. must be culverted, bridged, or otherwise designed to allow passage of the 50 percent chance exceedance (2-year return interval) flood event. Crossings that are designed to function as fords are acceptable. The filled area for a single road crossing is limited to 0.25 acre of waters of the U.S., including wetlands.
3.       **Outfall Structures:** The purpose of this activity is to discharge water into a reservoir. Outfall structures must be designed to prevent erosion at the point of discharge. The volume of fill for an outfall structure is limited to 25 cubic yards.
4.       **Reservoirs:** The purpose of this activity is to impound water. Reservoirs are created by rehabilitation and/or enlargement of existing earthen dams or dikes; or by construction of new earthen dams or dikes. The filled area for dams and dikes in waters of the U.S. is limited to 0.50 acre. The area in waters of the U.S. inundated by a reservoir is limited to 1.0 acre, which includes areas excavated to increase storage capacity. Construction of reservoirs for containing petroleum products other than produced water is not authorized. However, produced water may contain minor amounts of petroleum products provided the reservoir complies with Wyoming Water Quality Rules and Regulations, Chapter 1, Section 29, concerning oil and grease accumulation.
5.       **Erosion Control Structures:** The purpose of these activities is to prevent erosion of stream channels due to the discharge of water from reservoirs. Erosion control structures include revetments, stream barbs, and vanes to prevent erosion of stream banks. Grade control structures such as sills and weirs can be used to prevent erosion of stream beds. The volume of fill is limited to 1 cubic yard per linear foot for revetments and 50 cubic yards per structure for stream barbs, vanes, sills, and weirs.
6.       **Flow By-Pass:** The purpose of this activity is to by-pass natural runoff around reservoirs to prevent mixing with produced water. The volume of fill for diversion and outfall structures necessary for operation of a by-pass channel is limited to 50 cubic yards. The area in waters of the U.S. affected by excavation of a by-pass channel is limited to 0.25 acre.

## APPENDIX B SPECIAL CONDITIONS

1.        **Notification:** Permittees undertaking activities necessary for development of non-federal minerals must notify the U.S. Army Corps of Engineers (Corps) with a Notice of Intent (NOI) in accordance with the procedure described in Appendix C. A NOI is required prior to initiating any activity that requires filling more than 0.10 acre of waters of the U.S. The permittee shall not undertake any such activities unless and until the Corps provides written verification that the activity is authorized by GP 03-04. The Corps may determine that a standard (individual) Department of the Army permit is required in accordance with 33 CFR 325.2(e)(2).

Permittees may obtain verification from the U.S. Bureau of Land Management (BLM) for activities associated with development of federal minerals without prior notification of the Corps. However, the notification requirement described above would apply if the BLM declines.

2.        **Water Quality:** The permittee must comply with all terms and conditions of water quality certifications issued by the WDEQ under Section 401 of the Clean Water Act (see 33 CFR Part 330.4(c)).

3.        **Best Management Practices:** Permittees are required to conduct authorized activities according to the following guidelines in order to avoid and minimize adverse effects on water quality and the aquatic environment.

- (a) Control the storage and disposal of petroleum products, chemicals, or other deleterious materials in such a way that it cannot enter waters of the U.S., including wetlands;
- (b) Control all construction debris, fill, and other materials disposed on upland in such a way that it cannot enter waters of the U.S., including wetlands;
- (c) Undertake all work in such a manner so as to limit increases in suspended solids and turbidity;
- (d) Limit the clearing of vegetation to that which is absolutely necessary for construction;
- (e) Maintain appropriate erosion and siltation controls in effective operating condition during construction, stabilize all exposed soil and any disturbed areas at the earliest practicable date; and
- (e) Advise downstream water users of any adverse water quality changes caused by construction.

4.        **Suitable Fill Material:** No discharge may consist of unsuitable materials (e.g., trash, debris, car bodies, asphalt, etc.) and material discharged must be free from toxic pollutants in toxic amounts as required by Section 307 of the Clean Water Act.

5.        **Stockpiling:** Storage of excess soil or unwanted vegetation in waters of the U.S., including wetlands, outside of approved areas is not authorized.

6.        **Scrub-Shrub and Forested Wetlands:** No activity is authorized that would affect more than 0.10 acre of scrub-shrub and forested wetland combined as identified under the Cowardin classification system.

7.        **Wetland Mitigation:** All projects must be designed to avoid wetlands and minimize adverse effects on wetlands that cannot be avoided. Wetlands that are temporarily filled (less than 90 days) must be restored. Restoration includes reestablishing natural ground contours and replacement of wetland soil in disturbed wetland areas. Activities that result in filling more than 0.25 acre of wetland must be designed to restore or create similar wetland (in-kind) elsewhere, preferably near the project area (on-site), at a minimum replacement ratio of 1:1. **This mitigation requirement does not supersede or prevent any other federal, state, or local agency with jurisdiction over the project from imposing additional mitigation measures.** Mitigation measures must be implemented concurrent with construction of the reservoir. If mitigation is unsuccessful, the permittee may be required to undertake additional mitigation measures as directed by the Corps and/or the BLM.

## **APPENDIX B**

### **SPECIAL CONDITIONS (continued)**

8. **Historic Properties:** No activity is authorized that would adversely affect sites included in the most current listing of the National Register of Historic Places or sites known to be eligible for such listing, sites included in the National Register of Natural Landmarks, or any other known historic, cultural, or archaeological sites.

9. **Threatened and Endangered Species:** No activity is authorized that is likely to jeopardize the continued existence of species, or critical habitats, designated or proposed for designation as threatened or endangered pursuant to the Endangered Species Act of 1973. Information on threatened and endangered species may be obtained from the U.S. Fish and Wildlife Service.

10. **Wild and Scenic Rivers:** No activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system, while the river is in an official study status; unless, the appropriate federal agency, with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely effect the Wild and Scenic River designation, or study status.

11. **Tribal Rights:** No activity is authorized that would impair reserved Tribal rights; including, but not limited to, mineral, water, fishing, and hunting rights.



## **APPENDIX C NOTIFICATION PROCEDURE**

Permittees undertaking activities necessary for development of non-federal minerals must notify the U.S. Army Corps of Engineers (Corps) with a Notice of Intent (NOI) in accordance with this procedure prior to initiating any activity that requires filling more than 0.10 acre of waters of the U.S. The NOI must be in writing and must include project specific information as described in Items 1-6 below. The standard permit application form (Form ENG 4345) may be used for the notification, but must clearly indicate that it is a NOI for GP 03-04.

1. Name, mailing address, contact person, and telephone number(s) of the permittee.
2. Names, mailing addresses, and telephone number(s) of the property owner.
3. Copy of the appropriate portion of a U.S. Geological Survey map with the project location identified.
4. Brief project description with project drawings including the reservoir name, dam height, surface area, stream length and other relevant information for all authorized activities.
5. Wetland delineation for the entire reservoir area if wetlands are present or a determination that no wetlands exist at the site. Delineations must be prepared by a qualified individual in accordance with *Corps of Engineers, Wetland Delineation Manual* dated January 1987. Delineation reports must identify the location and size in acres of wetlands that are filled, excavated, or inundated for all authorized activities.
6. Mitigation plan for reservoirs that would require filling more than 0.25 acre of wetland for all authorized activities combined. The plan must include a complete description of soil and water manipulation techniques, revegetation techniques, plan view and cross-sectional drawings, and a map that shows the location of the mitigation area(s).
7. Photographs of the reservoir area and proposed mitigation area(s).

All NOI's for GP 03-04 must be sent to:

U.S. Army Corps of Engineers  
Wyoming Regulatory Office  
2232 Dell Range Boulevard, Suite 210  
Cheyenne, Wyoming 82009-4942

Questions concerning this notification procedure should be directed to the Wyoming Regulatory Office at the above address or by telephone at (307) 772-2300.

